

REMARKS/ARGUMENTS

Claims 1-39 are pending. Claims 1-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,233,618 to Shannon (“Shannon”) in view of U.S. Published Patent Application No. 2002/0040401 to Yasushi, et al. (“Yasushi”).

Per request of the Examiner in a telephonic interview held on November 29, 2010 (hereinafter “Interview”), Applicants submitted that same day an IDS, an RCE, and a Supplemental Amendment. The Supplemental Amendment amended Claim 28 to remove multiple dependencies and added new Claim 38 and new Claim 39, to include subject matter originally identified in Claim 28. Thus, it is believed that no new subject matter was introduced by the amendments in the Supplemental Amendment. Nevertheless, the previously issued Notice of Allowance was withdrawn and the Office issued a new Non-Final Office Action dated April 21, 2011 (hereinafter “Office Action”). Subsequently another Office Action dated April 27, 2011 (hereinafter “Supplemental Office Action”) was also received. Applicants also respectfully note that the references cited in the IDS filed on November 29, 2010, although reviewed by the Office, were not used in the subsequent rejection of Claims 1-39 under 35 U.S.C. § 103(a). Accordingly, applicants submit that, in view of the arguments provided below, all pending claims are still allowable and respectfully request that the Examiner permit these previously allowed claims to proceed to issuance.

Unfortunately, Applicants were unable to distinguish any substantive differences between the original Office Action and the subsequent Supplemental Office Action outside of the different notification dates and four apparent omissions on the Office Action Summary of the Supplemental Office Action. Accordingly, both the Office Action and Supplemental Office Action have been carefully considered and are addressed in this communication.

35 U.S.C. § 103(a) Rejections

Claims 1-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Shannon* in view of *Yasushi*. Applicants respectfully traverse.

To establish a *prima facie* case of obviousness, an Office Action must demonstrate that all claimed elements are taught or suggested by proffered prior art references. In fact, “consideration” of every claim feature is required in an obviousness determination. More

specifically, MPEP § 2143.03 indicates that “All words in a claim must be considered in judging the patentability of that claim against the prior art”.

To render a claim unpatentable, however, the Office must do more than merely “consider” each and every feature for this claim. Instead, the asserted combination of cited references must also teach or suggest *each and every claim feature*. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art).

The failure of an asserted combination to teach or suggest each and every feature of a claim continues to remain fatal to an obviousness rejection under 35 U.S.C. § 103, even after recent revisions to the MPEP. For example, in *In re Wada and Murphy*, Appeal 2007-3733, the BPAI specifically states that:

“When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).”

In sum, it remains well-settled law that obviousness requires **at least a suggestion of all of the elements of a claim**. See *In re Wada and Murphy*, citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) and *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements **in the way the claimed new invention does**.” *KSR*, 127 S.Ct. at 1741.

Claims 1, 13, 17, and 29

Before discussing the proposed combination of *Shannon* and *Yasushi* in detail, it is believed that a brief review of illustrative Claim 1 will be helpful. Claim 1 recites, *inter alia*, a method for providing conditional access to media content, the method comprising:

receiving a request for the media content destined for a remote media rendering device, **the request received by a media service provider server from a remote middleman server connected to the media rendering device on a local network;**

receiving, by the media service provider server, a device ID associated with the remote media rendering device;

verifying, by the media service provider server, based on the received device ID whether the remote media rendering device is approved to receive the requested media content; and

granting the request, by the media service provider server, if the remote media rendering device is approved to receive the requested media content.

Thus, amended Claim 1 is directed to a media service provider server in communication with a remote middleman server that is locally connected to a media rendering device. The media service provider server receives a device ID from the middleman server. Based on the device ID, the media service provider server verifies whether the media rendering device is approved, and the media service provider server grants the request if the media rendering device is approved. One example of this interaction is shown in Figure 4 of the instant application.

In contrast, the combination proposed by the Office includes *Shannon* and *Yasushi*. *Shannon* is directed to an access control technique for limiting access to content by a network device (e.g., unlabeled remote device 100 in Fig. 1 of *Shannon*) such as a proxy server, router, switch, firewall, bridge, or other network gateway. The received Office Action and Supplemental Office Action both concede that “the verification and the granting steps are done by the middleman server” in *Shannon*. More specifically, the local proxy server in *Shannon* acts to “approve, block, or restrict access to network information” that the client requests from the (public) network not “verifying...and granting the request, by the media service provider server” as recited in Claim 1.

This deficiency in *Shannon* cannot be overcome by *Yasushi*, as originally asserted in the received Office Action and Supplemental Office Action, because *Yasushi* performs the

verification and the granting steps in essentially the exact same way as *Shannon*. *Yasushi* is directed to a data communication system where access right information is held at a server (e.g., ASP server 4 in Fig. 1 of *Yasushi*) for each of a plurality of client devices so that access may be granted upon determining, based on the access right information, that the requested data is a type of data accessible from the client device. More specifically, *Yasushi* discloses performing the verification and the granting steps by the ASP (Application Service Provider) server 4, which represents the closest *Yasushi* equivalent of the middleman server.

This relative equivalency is best illustrated through a comparison with Figure 1 of *Yasushi* and Figure 1 of the instant application. In this case, each vehicle 14 fitted with an onboard terminal device 1 of *Yasushi* would most closely represent the media renderer client devices shown in Figure 1 of the instant application. Similarly, the Music Delivery Center Device 9 of *Yasushi* would most closely resemble the system server 100 in Fig. 1 or “media service provider server” of claim 1 in the instant application. Since *Yasushi* does not have a local network, there is no component directly analogous to the middleman server illustrated in the instant application. However, the ASP (Application Service Provider) server 4 of *Yasushi* is similar to the middleman server in that the ASP server facilitates communication between the client and other server resources. However, unlike the middleman server in the instant application, the ASP server of *Yasushi* holds the access right information for each “vehicle 14 fitted with an onboard terminal device 1” and regulates access of that vehicle to other servers and network resources, such as the Music Delivery Center Device 9 of *Yasushi*. This control is illustrated in [0058] of *Yasushi*, which explains that the Music Delivery Center Device 9 of *Yasushi* actually “accesses ASP server 4 to receive music data from a terminal device in addition to delivery of MP3 or AAC formatted music data to terminal devices and servers”. Thus, the Music Delivery Center Device 9 of *Yasushi* must access the ASP server to receive or to deliver music data with the music rendering device. While this illustrates some similarity to the media service provider server and middleman server of the instant application, the Music Delivery Center Device 9 of *Yasushi* does not verify whether the remote media rendering device (e.g., onboard terminal device 1) is approved to receive the requested media content or grant the request if the remote media rendering device is approved to receive the requested media content as is required by Claim 1.

Rather both the verification and the granting steps in *Yasushi* are performed by the ASP server 4, which was previously established as the closest *Yasushi* equivalent to the claimed middleman server. Some of the other relevant operations of the ASP server 4 and associated storage device 4a are described in [0056] and [0058] of *Yasushi*. Specifically, *Yasushi* further clarifies that “an ASP (Application Service Provider) server 4...communicates with the onboard terminal device 1 in response to an access from the onboard terminal device 1” and that “a database for the vehicle-related data is formed in the storage device 4a”. Additionally, it is respectfully believed that the ASP server 4 holds “**access right information**...for indicating a type of accessible data corresponding to each of a plurality of client devices” (*see e.g.*, Fig. 1 and Abstract of *Yasushi*) and that “the received data read request is granted” by the ASP server 4 (aka the closest *Yasushi* equivalent to the claimed middleman server) “upon determining in accordance with the access right information that the data corresponding to the received data read request is a type accessible from the client device.” (*see e.g.*, Fig. 1 and Abstract of *Yasushi*). Accordingly, applicants respectfully assert that the Music Delivery Center Device 9 of *Yasushi* cannot implement both the verification and the granting steps as claimed in Claim 1 of the instant application, because those steps are performed by the ASP server 4.

Clearly, neither *Yasushi* nor *Shannon* can teach the claim elements “**in the way the claimed new invention does.**” (*KSR*, 127 S.Ct. at 1741), because the elements relating to the verifying and the granting by the media service provider server are not taught. Specifically, applicants respectfully note, that in contrast to Claim 1, both *Shannon* and *Yasushi* verify and grant device access “based on received device ID” at their respective equivalents to “a remote middleman server” and not “by the media service provider server” as required in Claim 1. Similar claim language is found in independent Claim 13, Claim 17, and Claim 29. Therefore, Claims 1, 13, 17, and 29 are all believed to be patentable over the cited art. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) to Claims 1, 13, 17, and 29 is respectfully requested.

Claims 2-12, 14-16, 18-28 and 30-39

MPEP §2143.03 clarifies that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. (In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). Dependent Claims 2-12, 14-16, 18-28 and 30-39 are therefore believed to be patentable as well because they all are ultimately dependent on independent Claims 1, 13, 17, or 29 which were previously shown to be nonobvious. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) to the Claims 2-12, 14-17, 19, 20, and 22-24 is also respectfully requested.

While the dependent Claims 2-12, 14-16, 18-28 and 30-39 are believed to be patentable due to their dependence on the independent claims, each dependent claim also introduces at least one new element that Applicants believe make the dependent claims individually patentable. Thus, even assuming, *arguendo* that the proposed interpretation of *Yasushi* would allow the server to implement verification and granting, the proposed combination of *Shannon* and *Yasushi* still fails “to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements **in the way the claimed new invention does.**” (*KSR*, 127 S.Ct. at 1741.) for the subject matter in Claims 2-12, 14-16, 18-28 and 30-39.

Claims 6, 20, 21, and 31

More specifically, neither *Shannon* nor *Yasushi* teach or suggest “establishing a secure communication channel with the middleman server before sending the requested media content to the middleman server” as recited in Claim 6. Similar claim language is found in Claims 20, 21, and 31. Dependent Claims 6, 20, 21, and 31 are therefore believed to be patentable. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) to the Claims 6, 20, 21, and 31 is also respectfully requested.

Claims 9-11, 26, 27, and 33-35

Likewise, the proposed combination of *Shannon* and *Yasushi* fails to teach or suggest “obtaining a rating associated with the requested media content” and either “accessing” or “denying” access based on an “approved rating range” for the media rendering device as recited in Claim 9. While *Shannon* does indicate that a group of users (e.g., media renderer client devices) may be associated with different categories, where “each category is associated with a specific topic, such as, sex, violence, drugs, and so forth.” *Shannon* does not “[obtain] a rating associated with the requested media content” as recited in claim 9.

In fact, *Shannon* further clarifies that when one of those users “make a request for a web page or a server location or a data file having an Internet access address that appears in one of those (restricted) categories...that user will be denied access to that data, file, applet, web page, and so forth.” Thus, *Shannon* focuses on restricting access to identified URL addresses that have already been categorized as illustrated in Tables 2 and 3 of *Shannon*. This requires each requested webpage to be categorized in *Shannon* and a large database to be maintained of both category data (Table 2) and different “IP addresses” (Table 3). The size of the database would grow exponentially depending on the number of categories and the number of pages being categorized. For example, the “IP address” table would likely have multiple duplicate URL references, since many pages would include topics with content from multiple categories. Another problematic issue with categorization arises with websites that do not control all of the content available through their site. For example, in *Shannon* one might block access to search engines like www.google.com merely because pages with illicit content including pages with references to “sex, violence, drugs” could be accessed.

In contrast, use of a rating system as described in the instant application does not require that a large database of identified “categorized” URL addresses be maintained. Nor does it require that an entire IP address be blocked. Rather each user may have an “approved rating range” that can be kept individually and/or on the server. Upon making a request, the rating associated with requested content may be compared to the “approved rating range” of the user prior to delivering the content. Thus, where *Shannon* would block the entire URL, at least one embodiment of the claimed invention would allow use of the URL and could limit

the blocked content at the particular URL to content that “has a rating outside the approved rating range” as recited in claim 9.

Similar claim language is found in Claims 9-11, 26, 27, and 33-35. Dependent Claims 9, 9-11, 26, 27, and 33-35 are therefore believed to be patentable. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) to the Claims 9, 9-11, 26, 27, and 33-35 is also respectfully requested.

Conclusion

Accordingly, for at least the reasons above and in view of the fact that this application has previously been allowed, Applicants respectfully submit that all pending claims are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to ÆON Law's deposit account. The deposit account number is 50-4051.

Respectfully submitted,

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